

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of the Licensing Order  
Issued to Matthew J. Barrett

**ORDER ON DISCOVERY MOTION**

This matter came before Administrative Law Judge Kathleen D. Sheehy on the Motion to Compel Discovery filed by the Department of Labor and Industry on August 16, 2011. The Respondent filed a written response on September 9, 2011, at which time the motion record closed.

Christopher M. Kaisershot, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, appeared for the Department of Labor and Industry (Department).

Matthew Barrett (Respondent) appeared for himself without counsel.<sup>1</sup>

Based on all of the files and proceedings herein, and for the reasons contained in the Memorandum attached hereto, the Administrative Law Judge makes the following:

**ORDER**

1. The Department's Motion to Compel Discovery is **GRANTED IN PART AND DENIED IN PART**, as more fully explained in the attached Memorandum; and

2. The Respondent shall supplement his response to Interrogatory No. 4 by 4:30 p.m. on September 28, 2011; and

2. The procedural schedule is amended to require the parties to exchange their exhibits and witness lists on October 26, 2011. The hearing remains scheduled to take place at OAH commencing at 9:30 a.m. on November 4, 2011.

Dated: September 14, 2011

s/Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge

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<sup>1</sup> The Respondent was formerly represented by Karen A. Ring of Berndt Law Offices, PLLC. As of July 14, 2011, the Respondent advised that he no longer was represented by counsel.

## MEMORANDUM

The Department alleges that in April 2010, the Respondent submitted a Personal Electrical License Examination application, in which he requested to take the Class A Journeyman Electrician examination. In order to qualify to take the examination, an applicant must possess a minimum of 48 months of allowable work experience gained after the age of 17 years. In the application, the Respondent claimed that he had been working for his father's company, All Main Street Electric (AMSE), since 1998. The Respondent also applied for and received, in May 2010, a registration permitting an unlicensed individual to perform electrical work under the direct supervision of a licensed person working with the same employer.<sup>2</sup>

The Department maintains that the Respondent's father, Timothy Barrett, gave conflicting information about the Respondent's employment history and suggested that the Respondent had performed electrical work before obtaining his registration as an unlicensed individual. In addition, the Department alleges that it obtained conflicting information about the length of Respondent's employment from the Department of Employment and Economic Development (DEED). After the Respondent failed to appear as ordered in December 2010 with information to support his application, the Department denied the application to take the Class A Journeyman Electrician license examination, revoked the Respondent's registration as an unlicensed individual, imposed a \$3,000 civil penalty, and ordered the Respondent to cease and desist from performing or offering to perform electrical work that requires registration in Minnesota.<sup>3</sup>

Accordingly, in the contested case hearing that is now scheduled to take place on November 4, 2011, the Respondent will have the burden to prove that he is qualified to take the Class A Journeyman Electrician license examination; and the Department will have the burden to prove that the Respondent failed to cooperate with the commissioner's request that he appear and provide information; that the Respondent performed electrical work without the required registration; and that the Respondent submitted false or misleading information on the license application.

On June 27, 2011, the Department served on the Respondent Interrogatories, Requests for the Production of Documents, and Requests for Admission.<sup>4</sup> On July 27, 2011, the Respondent served written responses. The Department subsequently filed and served a motion to compel further discovery, and the Respondent filed a supplemental response on September 9, 2011.

The rules of the Office of Administrative Hearings specify that any means of discovery available under the Rules of Civil Procedure for the District Court of

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<sup>2</sup> Affidavit of Charlie Durenberger (Aug. 16, 2011) ¶¶ 2 & 4.

<sup>3</sup> Licensing Order With Penalty (Feb. 16, 2011).

<sup>4</sup> Durenberger Aff. Exs. A-C.

Minnesota is allowed and authorize the filing of motions to compel. The rules further state that a party bringing a motion to compel must show the discovery is necessary, is not requested for the purpose of delay, and the issues or amounts in controversy are significant enough to warrant the discovery. The party resisting discovery may raise any objections that are available under the Minnesota Rules of Civil Procedure, including lack of relevancy and privilege.<sup>5</sup>

The Department's Requests for Admissions asked the Respondent to admit or deny a variety of factual allegations. With respect to all Requests for Admission that were not admitted, Interrogatory No. 1 asked the Respondent to identify all facts supporting or explaining the denial; to identify and produce all documents supporting or explaining the denial; and to identify all witnesses with knowledge of the facts supporting the denial.

### **Interrogatory No. 1/Request for Admission No. 3**

Request for Admission No. 3 asks the Respondent to admit or deny the factual allegations contained in ¶ 3 of the Findings of Fact in the Licensing Order, namely, that on April 22, 2010, the Respondent submitted an application requesting to take the Class A Journeyman Electrician examination identifying AMSE as his employer from 1998 to the present. The Respondent denied Request No. 3.<sup>6</sup> In his first response to Interrogatory No. 1, he stated only "This request is not correct."<sup>7</sup> In his most recent response, he revised his response to Interrogatory No. 1 to state that he worked as an intern for his father after school, weekends, and vacations for perhaps 20 years, or since the age of seven. He stated he had no documents in his possession to support this claim because to the best of his knowledge, no timesheets or other records were kept for his intern work and he was not paid for this work. He identified his father as the only source of information about his work.<sup>8</sup>

The Respondent has answered the question posed by the Department, and the Department's motion to compel further responses is denied. The Respondent should be aware, however, that he will not be permitted to introduce any evidence during the hearing that is not disclosed to the Department in discovery. It is difficult to see how he will be able to prove his qualifications to take the examination absent supplementation of this response.

### **Interrogatory No. 1/Request for Admission Nos. 4-7**

Request for Admission Nos. 4-7 ask the Respondent to admit or deny the factual allegations contained in ¶¶ 4-7 of the Findings of Fact in the Licensing Order, namely, that the Department sent a request for experience verification to

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<sup>5</sup> Minn. R. 1400.6700, subp. 2.

<sup>6</sup> Durenberger Aff. Ex. D.

<sup>7</sup> Durenberger Aff. Ex. E.

<sup>8</sup> Response (Sept. 9, 2011).

AMSE on April 28, 2010; that Tim Barrett submitted a verification form on May 12, 2010, containing certain information; that the records provided by DEED indicate the Respondent had been employed by AMSE for 15 months; and that Tim Barrett advised the Department that the Respondent had performed electrical work on behalf of AMSE since January 1, 2009.

In his initial response, the Respondent stated he “had no knowledge of this.”<sup>9</sup> These allegations do not appear to be within the personal knowledge of the Respondent, as they concern the actions of his father and the content of records provided to the Department by DEED. The Department’s motion to compel further responses with regard to these requests for admission is denied.

#### **Interrogatory No. 1/Request for Admission Nos. 9 and 10**

Request for Admission Nos. 9 and 10 ask the Respondent to admit or deny the factual allegations contained in ¶¶ 9 and 10 of the Findings of Fact in the Licensing Order, namely, that he failed to appear at the Department as ordered on December 3, 2010, nor did the Respondent seek to reschedule or make other arrangements; and on January 24, 2011, the Respondent submitted an unsigned letter acknowledging that he had performed electrical work on behalf of AMSE as an employee and unpaid intern, although he had no records of where he had performed work other than a 2009 W-2 form from AMSE.

In his initial response, the Respondent denied these allegations.<sup>10</sup> In his revised response on September 9, 2011, he acknowledged that he did not appear on December 3, 2010. He still maintains that he has no documents to support his claim of unpaid intern work.<sup>11</sup>

The Respondent has answered the question posed by the Department, and the Department’s motion to compel further responses is denied. As noted above, however, the Respondent will not be permitted to introduce any evidence during the hearing that is not disclosed to the Department in discovery.

#### **Interrogatory No. 1/Request for Admission Nos. 11-19 and 21-29**

These requests ask the Respondent to admit or deny performing electrical work at specific properties at specific times. The Respondent denied all of these requests for admission.<sup>12</sup> In his revised response, he stated that “there were no witnesses to something that did not occur.” He further stated that his father would be the only available source of information about his work.<sup>13</sup>

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<sup>9</sup> Durenberger Aff. Ex. D.

<sup>10</sup> Durenberger Aff. Ex. D.

<sup>11</sup> Response (Sept. 9, 2011).

<sup>12</sup> Durenberger Aff. Ex. D.

<sup>13</sup> *Id.*

The Respondent has answered the question posed by the Department, and the Department's motion to compel further responses is denied.

## **Interrogatory No. 2**

This Interrogatory asks the Respondent to affirmatively identify every property at which he performed any electrical work on behalf of AMSE since 2006, and for each such job to identify the person who supervised his work; a description of the specific work performed; the date and number of hours worked on the property; and identification of all documents that pertain to work he performed.

The Respondent's initial answer did not identify any property or project on which he had worked. He did state that either Tim Barrett or Guy Stream had supervised him. He stated that he had performed general electrical work, but he was unable to identify the date or number of hours he had worked and had retained no documents pertaining to the work.<sup>14</sup> In his revised response, he stated that he had worked on the Maplewood Project described in Request for Admission No. 20 (which he did admit). He again stated that his father was the only source of information about his work and stated that he had no documents to support his claims.<sup>15</sup>

As noted above, the Respondent has the burden to show that he has the requisite training and experience to take the licensure examination. If he is unable to support his work experience, he will not be able to prevail on this issue. With regard to any documentation of supervision, it appears AMSE would be the source of any such documentation. Both the Respondent and the Department could potentially request subpoenas to seek documents from AMSE, but neither appear to have done so at this point.

## **Interrogatory No. 3**

This interrogatory asks the Respondent to identify his educational background, including all education and training to perform electrical work. The Respondent answered that he had an AA degree and was trained to perform electrical duties.<sup>16</sup> In an August 12, 2011, letter, the Respondent described some work he performed at the age of 18 or 19 for a company called Encompass.<sup>17</sup> In his revised response, he stated that he obtained an AA degree with an emphasis on writing and business "around 2006 from Century College in White Bear Lake, Minnesota." He also stated that his electrical training was obtained during about 20 years of internship with his father and AMSE. He supplemented his response with regard to the location of the company he worked for in Fort Myers, Florida,

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<sup>14</sup> Durenberger Aff. Ex. E.

<sup>15</sup> Response (Sept. 9, 2011).

<sup>16</sup> Durenberger Aff. Ex. E.

<sup>17</sup> Durenberger Aff. Ex. G.

and the type of work he did there. He provided no further details about the length or timing of his experience in Florida. He stated he had no records with regard to this employment.<sup>18</sup>

It appears the Respondent has answered these questions to the best of his ability, and the Department's motion to compel further responses is denied. The Administrative Law Judge notes, however, that if most of the Respondent's electrical training occurred in "off the books" employment, he will have difficulty proving his qualifications to take the licensure examination. Moreover, during the hearing the Respondent will not be permitted to rely on evidence that is not disclosed to the Department in discovery. If the Respondent has more detail about his education and employment history, it is in his interest to supplement these responses sufficiently in advance of the hearing so that the Department can evaluate it.

#### **Interrogatory No. 4**

Interrogatory No. 4 asks the Respondent to identify his employment history since 2006. Initially, the Respondent stated that he "periodically worked for AMSE, otherwise this question is irrelevant."<sup>19</sup> In a letter dated August 12, 2011, the Respondent stated that:

Between 2006 to present as far as I can remember I only worked for AMSE in late 2009 and briefly into 2010. I may have worked for AMSE in 2005 that lead in to early 2006 but I should add that I could be wrong and I could be referring to an earlier period. The rest of my employment history was spent either in another state or in attempts to set up my own businesses, none of which were electrical nor in any way related to AMSE.<sup>20</sup>

In his revised response, he stated that he had spent much of the time since 2006 trying to establish his own, non-electrical business and working occasionally for his father. He attached some employee earnings records (apparently from AMSE, but no employer is identified on the records) showing amounts he was paid from 2009 to 2011. He also attached some bank records showing payroll deposits from AMSE during the last 18 months.<sup>21</sup>

The Responses to Interrogatory No. 4 are clearly insufficient. The Respondent is obligated to describe all of his employment, whether or not it was electrical or related to AMSE, and whether it was in the state or out of the state, during the period in question. He must also fully describe any self-employment, including his efforts to establish a different business. Moreover, he must identify

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<sup>18</sup> Response (Sept. 9, 2011).

<sup>19</sup> Durenberger Aff. Ex. E.

<sup>20</sup> Durenberger Aff. Ex. G.

<sup>21</sup> Response (Sept. 9, 2011).

any and all records that pertain to this employment history, whether or not it was related to electrical work or AMSE. If the Respondent was working somewhere else, for example, it might contradict his claim of working as an unpaid intern for AMSE for some period of time. It should not be that difficult for the Respondent to describe and substantiate his full employment history. The Department's motion to compel further information in response to Interrogatory No. 4 is granted.

### **Interrogatory No. 7**

This interrogatory asks the Respondent to provide the full name and present address of persons with knowledge of the facts at issue in this case and to provide a brief statement of the facts known to each person. The Respondent initially identified Timothy Barrett and Brian Barrett, his father and brother, as persons with knowledge.<sup>22</sup> He later added himself.<sup>23</sup> In his revised response, he added Guy Stream and stated that these persons were at job sites and supervised work that he performed.<sup>24</sup> These answers sufficiently answer the questions posed, and the Department's motion to compel further responses is denied.

### **Requests for Production of Documents**

Document Request No. 7 asks for documents relating in any way to electrical work performed on any property for or on behalf of AMSE since 2006, including timesheets, invoices, bills, receipts, paystubs, emails, text messages, mileage logs, calendars, notes, journals, diaries and the like. Request No. 8 asks for all documents concerning the Respondent's education and training to perform electrical work. Request No. 9 asks for cell telephone records for the time between March 1, 2008, and November 1, 2010. The Respondent initially stated that none of these records had been retained and were not available.<sup>25</sup> He persists in that claim, despite his recent production of employee earnings records and bank records showing payroll deposits. Based on the Respondent's representations that no further documentation exists, the Administrative Law Judge will deny the Department's motion to compel, but will repeat the advice to the Respondent given above: the Respondent's refusal to provide detail to substantiate his experience will harm his ability to demonstrate his qualifications, and if there is more documentation, it should be provided to the Department sufficiently in advance of the hearing so the Department can evaluate it.

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<sup>22</sup> Durenberger Aff. Ex. E.

<sup>23</sup> Durenberger Aff. Ex. G.

<sup>24</sup> Response (Sept. 9, 2011).

<sup>25</sup> Durenberger Aff. Ex. E.

## **Motion to Dismiss**

In his revised response, the Respondent demanded that the contested case be dismissed, with a promise of no further harassment from the Department of Labor, and that he be able to take his license examination. This argument reflects a fundamental misunderstanding of this process, and the Department need not respond to it. The Respondent requested the contested case in order to appeal the Licensing Order. In the contested case hearing, the Respondent will have an opportunity to make a record to establish his qualifications for licensure, and the Department will have the obligation to prove the facts that support its claims that Respondent failed to cooperate with the commissioner's order to appear; that the Respondent performed electrical work without the required registration; and that the Respondent submitted false or misleading information on the license application. If the Respondent wishes to withdraw his request for a hearing, he may do so, but the Licensing Order issued on February 16, 2011, would remain in effect.

**K. D. S.**